



Expungement and Sealing of Criminal and Court Records

November 15, 2021



Virginia Sealing Legislation

- Legislation was enacted in 2021 to create five new processes for sealing criminal and court records:
 - Automatic sealing of convictions;
 - Petition-based sealing of convictions;
 - Automatic sealing of misdemeanor non-convictions;
 - Automatic sealing for mistaken identity or unauthorized use of identity; and,
 - Sealing of traffic infractions by law after 11 years.
- Becomes effective July 2025, or earlier if possible.



Automatic Sealing of Convictions

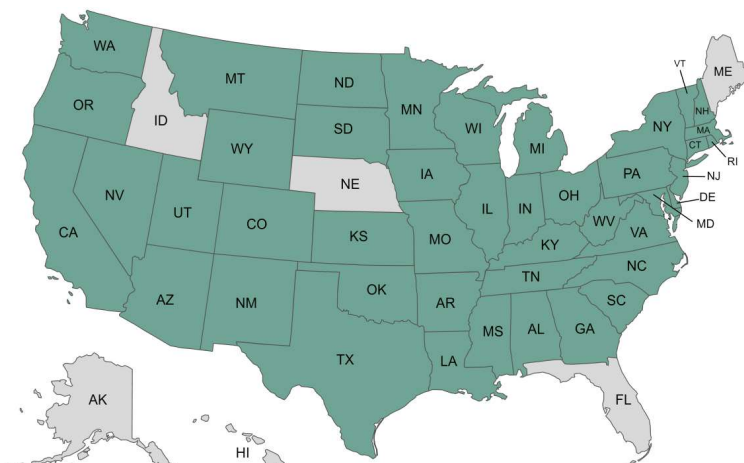
- Eligible misdemeanor convictions include:
 - Underage alcohol-related offenses
 - Larceny and concealment
 - Trespass
 - Instigating trespass by others
 - Trespass on posted property
 - Disorderly conduct
 - Possession and distribution of marijuana
- Automatic sealing occurs after 7 years if the person is not convicted of any new crimes.

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44 States Seal Misdemeanor Convictions



Map by Crime Commission staff based on legal analysis.

■ - States with conviction relief for misdemeanors
■ - States without conviction relief for misdemeanors

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Petition-Based Sealing of Convictions

- Eligible convictions:
 - All misdemeanors
 - All Class 5 and 6 felonies
 - All felonies punishable as larceny
- Excluded convictions:
 - DUI-related offenses
 - Domestic assault and battery

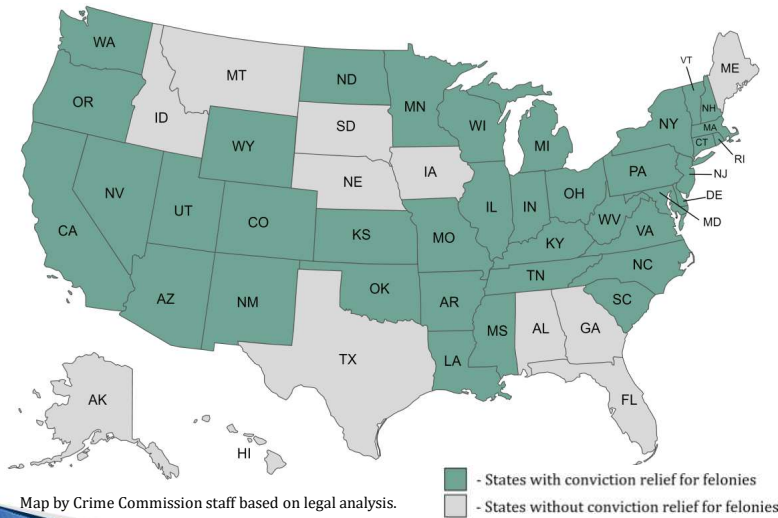


Petition-Based Sealing of Convictions

- Multiple criteria for petition-based sealing:
 - Eligibility to file based on prior criminal record
 - Requirements to grant the sealing petition:
 - No new convictions for 7 years (misdemeanor) or 10 years (felony) from the date of conviction, final dismissal, or release from custody
 - Demonstrate rehabilitation (alcohol or drug)
 - No more than two prior petition-based sealings of different sentencing events
 - Manifest injustice to petitioner



38 States Seal Felony Convictions



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Legislative Directives

- HB2113 and SB1339 required the Crime Commission to examine six specific matters in relation to the current expungement process and the newly created sealing processes.
- While Virginia law now allows for the sealing of criminal convictions, many complex issues related to the expungement and sealing of criminal and court records still remain.

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Legislative Directive 1

- **Directive 1:** Study the interplay between the expungement statute and the sealing of criminal and court records.
 - The Virginia Code now contains three forms of criminal record relief:
 1. Expungement
 2. Sealing
 3. Marijuana expungement



Legislative Directive 1

1. Expungement: removing records from public inspection. Traditionally for non-convictions.
2. Sealing: limits access to and dissemination of records to 25 specific purposes.
3. Marijuana expungement: referred to as expungement, but functions in practice as sealing.
 - Newly created automatic and petition-based expungement for certain marijuana-related charges and convictions.



Legislative Directive 1

- These three forms of criminal record relief vary substantially in terms of:
 - Purpose
 - Process
 - Access
 - Protections
- Numerous policy decisions must be made to align the criminal record relief provisions in the Code.



Legislative Directive 2

- **Directive 2:** Recommend a review process for any proposed changes to the expungement or sealing of criminal or court records.
 - *Recommendation:* Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).



Legislative Directive 3

- **Directive 3:** Consult with stakeholders to determine and recommend methods to educate the public on the new sealing processes.
 - *Recommendation:* Authorize funding for 2 new FTE's at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel, educate the public, and serve as a resource for attorneys, government agencies, and community stakeholders on expungement and sealing (total estimated cost: \$215,000).

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Legislative Directive 4

- **Directive 4:** Study the permissible uses of criminal and court records that have been expunged or sealed.
 - The permissible uses of expunged and sealed records vary significantly and any changes will require numerous policy decisions.
 - Expunged records: access and dissemination based on a court order.
 - Sealed and marijuana expunged records: access and dissemination for 25 specific purposes.

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Legislative Directive 5

- **Directive 5:** Study plea agreements in relation to the expungement or sealing of criminal and court records.
 - Laws governing plea agreements in Virginia and in other states vary.
 - Any limitations on plea agreements must be weighed cautiously.
 - Effectiveness of sealing laws could be undermined.
 - However, plea agreements, even with sealing restrictions, may still be favorable to defendants.



Legislative Directive 6

- **Directive 6:** Study the feasibility of destroying or purging expunged or sealed criminal and court records.
 - The sealing legislation was drafted to not require the destruction of records due to the significant resources needed.
 - Destroying sealed records is contrary to the provisions of the new legislation which allows access to and dissemination of sealed records for 25 specific purposes.



Legislative Directive 6

- Expunged records are not destroyed, but rather physical and electronic access to such records is significantly restricted.
- Staff only identified one state that completely destroys expunged records and did not identify any states that completely destroy sealed records.
- Destroying expunged or sealed criminal or court records in Virginia will require numerous policy decisions and significant additional resources.



Summary

- The Virginia Code now includes three forms of criminal record relief with conflicting policies and processes which must be reconciled to ensure that:
 - The framework is consistent;
 - Individuals have access to the processes;
 - Post-relief protections are uniform; and,
 - Continuing resources are available.



Recommendations



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- **Recommendation 1:** The Crime Commission should continue to examine the expungement and sealing of criminal and court records in order to reconcile conflicts between the three criminal conviction relief processes now in the Virginia Code.



Recommendations

- **Recommendation 2:** Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).



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- **Recommendation 3:** Authorize funding for 2 new FTE's at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel, educate the public, and serve as a resource for attorneys, government agencies, and community stakeholders on expungement and sealing (total estimated cost: \$215,000).